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W.P(MD)No.2961 of 2021

BEFORE THE MADURAI BENGH OF MADRAS HIGH COURT

Orders reserved on 26.07.2022	Orders pronounced on 03.08.2022
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CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

W.P(MD)No.2961 of 2021

S.Mohana

... Petitioner

Vs

1.The District Collector,
Office of the District Collector,
Kanyakumari District.

2.The Tahsildar,
Kalukulam Taluk,
Kanyakumari District.

3.The Assistant Commissioner of Labour,
Office of the Deputy Commissioner of Labour,
Tirunelveli.

4.Secretary,
Eraniel Sarvodaya Sangam,
No.28/92, Muttom Road,
Eraniel, Neyyoor Post,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus, directing the first respondent to issue a certificate under Section 8 of the Payment of Gratuity Act, after quantifying the arrears due to the petitioner so as to direct the second respondent to initiate recovery proceedings against the fourth respondent, thereby implementing the orders of the third respondent dated 11.02.2019 made in P.G.No.47 of 2016



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and direct to pay the same to the petitioner within a time frame to be fixed by this Court.

For Petitioner	: Mr.G.Aravinthan
For RR 1 to 3	: Mr.J.John Rajadurai Government Advocate
For R - 4	: Mr.V.H.S.Prathap

ORDER

This Writ Petition is filed for issuance of a Writ of Mandamus, directing the first respondent to issue a certificate under Section 8 of the Payment of Gratuity Act, after quantifying the arrears due to the petitioner so as to direct the second respondent to initiate recovery proceedings against the fourth respondent, thereby implementing the orders of the third respondent dated 11.02.2019 made in P.G.No.47 of 2016 and direct to pay the same to the petitioner.

2. The petitioner worked as an Assistant in the office of the fourth respondent and due to alleged irregularities, she was placed under suspension on 20.12.2003 and later she was dismissed from service. She was not paid any subsistence allowance and therefore she filed applications in P.S.A.Nos.1 of 2006 and 6 of 2007 for the period from 20.12.2003 to 16.12.2005 and from 17.12.2005 till the payment of subsistence allowance respectively. The fourth



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respondent filed applications to reject the petitioner's claim and those applications were dismissed by the third respondent. Against the said order, the fourth respondent filed a Writ Petition in W.P(MD)No.8090 of 2010 and that was also dismissed on 19.11.2010. Subsequently, the applications in P.S.A.Nos.1 of 2006 and 6 of 2007 were renumbered as P.S.A.Nos.20 and 21 of 2012. Since the fourth respondent dismissed the petitioner from service, she raised a dispute under the Industrial Disputes Act in I.D.No.91 of 2006 before the Labour Court, Tirunelveli and that was allowed on 01.06.2012 directing the fourth respondent to reinstate the petitioner without backwages. This Court in W.P(MD)No.13608 of 2014, by an order dated 19.03.2018, confirmed the order of reinstatement passed in I.D.No.91 of 2006.

3. In the meanwhile, the petitioner attained the age of superannuation on 29.11.2007 and therefore she was entitled for gratuity. Hence, the petitioner filed P.G.No.47 of 2016 before the third respondent claiming gratuity on the basis of monthly salary of Rs.4,500/-. The third respondent quantified the petitioner's monthly salary at Rs.3,206/- and calculated the gratuity to be paid to the petitioner as Rs.46,240/- with subsequent interest at 10% per annum from 30.11.2009. The fourth respondent did not pay the



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amount and therefore the third respondent by proceedings in AA2/3164/2019, dated 09.03.2020 issued a certificate under Section 8 of the Payment of Gratuity Act and forwarded it to the first respondent for recovering under the Revenue Recovery Act. Even thereafter, the amount was not paid. Therefore this Writ Petition is filed for implementing the orders passed by the third respondent in P.G.No.47 of 2016, dated 11.02.2019.

4. Learned counsel for the fourth respondent submitted that the fourth respondent Sangam has become defunct and is not in a position to pay the amount. The fourth respondent will pay the amount in installments.

5. In reply, learned counsel for the petitioner submitted that the third respondent fixed the gratuity amount at Rs.46,240/- with interest at 10% per annum from the date of gratuity amount till the date of payment.

6. Considered the rival submissions and perused the records.

7. In the enquiry in P.G.No.47 of 2016, five witnesses have been examined and two documents were marked, it was found that



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the petitioner is entitled for a sum of Rs.46,240/- as gratuity with interest at the rate of 10% per annum from the due date till the date of payment. Though this order was passed on 11.02.2019, till now payment has not been made. There is no justification for withholding the payment and no justification was offered by the fourth respondent for withholding the amount. Therefore the fourth respondent society has no option except to pay the amount as prayed by the petitioner. However, considering the present condition of the fourth respondent Society, this court directs the payment of Rs.46,240/- with interest calculated at 10% per annum from the due date till the date of payment in three equal monthly installments to the petitioner. The first, second and third installments are to be paid on 01.09.2022, 01.10.2022 and 01.11.2022 respectively. The installments amount to be paid on or before 10th of every English Calendar month.

8. Accordingly, this Writ Petition is allowed on the above terms. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

03.08.2022

Internet :Yes
Index :Yes / No
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Note:-

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

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G.CHANDRASEKHARAN, J.

ps

Order made in
W.P(MD)No.2961 of 2021

03.08.2022